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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re RICARDO G. et al., Persons Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CARMEN B.,

Defendant and Appellant.

D056123

(Super. Ct. No. J514022E-F)

APPEAL from a judgment of the Superior Court of San Diego County, Gary M.  
Bubis, Judge. Affirmed.

Carmen B. appeals from a judgment terminating her parental rights to her minor children, Ricardo G. and C.G. (together the minors), under Welfare and Institutions Code<sup>1</sup> section 366.26. Carmen challenges the sufficiency of the evidence to support the

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

court's findings that the sibling relationship exception under section 366.26, subd. (c)(1)(B)(v) did not apply to preclude termination of parental rights. We affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

In February 2009 the San Diego County Health and Human Services Agency (the Agency) filed petitions on behalf of four-year-old Ricardo and three-year-old C.G. under section 300, subdivisions (b) and (g). The petitions alleged Carmen had abused methamphetamines and marijuana. The minors were at risk of suffering serious physical harm because Carmen had abused drugs in the family home. Further, Carmen was incarcerated and unable to arrange for appropriate care of the minors. The Agency reported Carmen had an extensive history of substance abuse. In addition, Carmen had four older children that had been removed from her care. Carmen had been unable to reunify with her older children.

During an interview with an Agency social worker, Carmen admitted to abusing drugs in the family home. The social worker reported the minors tested presumptively positive for methamphetamines and showed signs that they suffered from inflammation of the nostrils due to smoke inhalation. In addition, Carmen had a criminal history that included petty theft and vandalism. Three of her four older children had been adopted and one was raised by a relative. The social worker further reported that the minors' home was in poor condition and dirty. There was little food in the house. Both children suffered from significant dental problems.

One of the minors' half siblings, Isabel H., had been living with the minors in the family home. Carmen often left the minors in the care of Isabel. Isabel no longer lives in the family home. The Agency reported Isabel had been participating in visits with the minors after they were removed from Carmen's care.

In March 2009 Carmen tested positive for drug use, and she missed drug tests in April. The court held a jurisdiction and disposition hearing, sustained the allegations in the petitions listed under section 300, subdivision (b) and dismissed the section 300, subdivision (g) allegations. The court detained the minors, and ordered they remain placed in out-of-home care. The court further denied reunification services to Carmen and scheduled a section 366.26 hearing.

In an August 2009 assessment report, social worker Brooke Guild assessed the minors as adoptable. The minors were young, generally in good health, attractive and had engaging personalities. They had shown some signs of separation anxiety and Ricardo suffered from some developmental delays, but this may have been due to the fact he had been neglected in the family home. All concerns were being addressed in therapy or other services.

The minors had been living with their current caregiver since the onset of the dependency. The caregiver was committed to adopting them. The caregiver was also open to maintaining contact between the minors and Isabel. The Agency had identified 18 other approved adoptive homes interested in adopting the minors together. Guild noted Carmen did not consistently visit the minors after their removal, and she did not maintain regular contact with the social worker. When visits did take place, the minors

did not show any emotional signs of distress at the end of visits, and they separated easily from Carmen. Guild opined that it would not be detrimental to the minors to terminate Carmen's parental rights.

Guild reported that the minors participated in supervised visits with Isabel. The visits generally were appropriate and the minors enjoyed seeing Isabel. Guild noted they separated easily from Isabel when visits ended.

In an addendum report, Guild reported that Isabel continued to visit the minors. Isabel referred to C.G. and Ricardo as her "babies." She indicated that she wanted to have more visits with the minors than she had been receiving. During visits, Isabel was loving and gentle with the minors. They enjoyed seeing Isabel and knew her as their sister. At the end of visits, however, the minors did not show signs of distress. They also did not ask about living with Isabel or when they would see her again. Isabel made strong and repeated efforts to call the minors at the caregiver's home. However, Ricardo showed little interest in wanting to talk to Isabel. C.G. was willing to talk and had brief conversations with Isabel.

Guild noted that Isabel lacked stable employment or a stable home. There was also concern that Isabel was not aware of the minors' needs. The social worker continued to recommend adoption. She reported the minors want to live with their caregiver, and they have developed a significant, emotional bond to the caregiver.

The court held a section 366.26 hearing in October 2009. The court received in evidence the Agency's reports and heard testimony from Guild. Guild reiterated that the supervised visits between Isabel and the minors generally were appropriate. Isabel

played games with the minors and was friendly. The minors sometimes were happy to see Isabel. However, there were instances during which they were hesitant to visit with her. They showed their hesitation by not wanting to leave their caregiver, and sometimes they had to be instructed to leave the caregiver and go to Isabel. Guild reported Isabel sometimes did not act appropriately with the minors. Isabel would speak to them as if they were infants, and Guild believed that communicating in that form with the minors was not appropriate. The minors needed to have their developmental needs met and it was not in their best interests, given their current age, to communicate in that manner.

Guild further testified the minors told her if they could live anywhere, they wanted to live with their caregiver. The caregiver is committed to adopting both children. Guild did not believe that the relationship the minors had with Isabel outweighed the permanency of adoption.

Carmen testified that she loves her children and they love her. She does not want them to be adopted. She further testified the minors would benefit from continuing contact with Isabel.

After considering the evidence, the court found the minors were likely to be adopted and that none of the exceptions to section 366.26, subdivision (c)(1)(B) applied to preclude terminating parental rights. The court terminated parental rights and referred the minors for adoption.

## DISCUSSION

Carmen contends the sibling relationship exception set forth in section 366.26, subdivision (c)(1)(B)(v) applied to compel a permanent plan other than adoption. She

asserts that Isabel had a close and significant relationship with the minors, and ongoing contact with Isabel was in thier best interests.

A

We review the judgment to determine whether there is substantial evidence to support it. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record in a light favorable to the juvenile court's order and affirm the order even if there is other evidence supporting a contrary finding. (*In re Casey D.*, *supra*, at pp. 52-53; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 573.) If the court finds that a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds that termination would be detrimental to the child under one of five specified exceptions. (§ 366.26, subd. (c)(1)(B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(B)(v) provides an exception to terminating parental rights when the juvenile court finds there is a compelling reason for determining that termination would be detrimental to the child due to substantial interference with a child's sibling relationship. Factors to be considered include the nature and extent of the relationship, whether the child was raised with a sibling in the same home, and whether the child has strong bonds with a sibling. The court must also consider whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption. (*Ibid.*; see also *In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951-952.) The purpose of this exception is to preserve long-standing sibling relationships that serve as "anchors for dependent children" whose lives are in turmoil. (*In re Erik P.*, *supra*, 104 Cal.App.4th at p. 404.)

The sibling relationship exception contains "strong language creating a heavy burden for the party opposing adoption." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) The exception focuses exclusively on the benefits and burdens to the child being considered for adoption, not the other siblings. (*Ibid.*) Similar to the beneficial parent-child relationship exception, application of the sibling relationship exception requires a balancing of interests. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 951.) However, the parents have the burden to show: (1) the existence of a significant sibling relationship; (2) termination of parental rights would substantially interfere with that relationship; and (3) it would be detrimental to the child if the relationship ended. (*Id.* at p. 952.) Once the parent establishes that a sibling relationship is so strong that its severance would be detrimental to the adoptive child, the court then decides whether the benefit to the child

of continuing the sibling relationship outweighs the benefit of adoption. (*Id.* at pp. 952-953.)

## B

Here, the evidence showed the minors had lived with Isabel before their removal. Isabel frequently took care of them while Carmen was out of the house; Isabel did this until she moved out of the family home. After the minors' removal, Isabel regularly visited them and she contacted them at the caregiver's home. The minors enjoyed seeing Isabel. She was affectionate toward the minors and she loved them. However, outside of visits, the minors did not ask when they would see her again. When Isabel telephoned them, Ricardo did not always want to talk to her. At the end of supervised visits, the minors separated easily from Isabel and did not show signs of distress. Based on the evidence, the court could reasonably infer the sibling relationship was not so significant as to constitute a "compelling reason" to order a permanent plan other than adoption for the minors. (§ 366.26, subd. (c)(1)(B).) Carmen did not meet her burden of showing it would be detrimental to the minors if their relationship with Isabel ended. (*In re Eric P.*, *supra*, 104 Cal.App.4th at p. 402.)

Further, the evidence showed the caregiver was willing to maintain the sibling relationship. Although there are no guarantees sibling contact will continue after the minors are adopted, this factor is not determinative. Under the proper legal analysis of section 366.26, subdivision (c)(1)(B)(v), there was no showing termination of parental rights would substantially interfere with the sibling relationship. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.)



The evidence amply supports a finding the benefit to the minors of continuing the sibling relationship was outweighed by the benefits they would achieve through adoption. The minors stated they want to live with the caregiver, who is committed to providing them a safe, stable and nurturing home. Substantial evidence supports the court's finding the exception of section 366.26, subdivision (c)(1)(B)(v) did not apply to preclude terminating parental rights. (See *In re Celine R.* (2003) 31 Cal.4th 45, 61-62; *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.)

#### DISPOSITION

The judgment is affirmed.

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BENKE, Acting P. J.

WE CONCUR:

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NARES, J.

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McINTYRE, J.